IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4511 of 2007()

CRA.530/2004 of ADDITIONAL SESSIONS COURT (ADHOC)III, THRISSUR
CC.1221/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

REVN. PETITIONER: APPELLANT/ACCUSED

TOMI,AGED 35, S/O.KUNJUVAREED
PALLATHATTIL, KALLOOR VADAKKUMMURI VILLAGE,
KADUKUTTY DESOM.

BY ADV. SRI.K.DIVAKARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY PUBLICPROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 4511 of 2007

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Dated: 19-12-2007

ORDER

Petitioner who was the accused in C.C. No. 1221 of 2001 on the file of the J.F.C.M. Chalakkudy for offences punishable under Sections 279 and 338 I.P.C. challenges the conviction entered and the sentence passed concurrently by the courts below for the said offences.

2. The case of the prosecution as proved by the evidence adduced by the prosecution can be summarised as follows:-

On 24-6-2001 at about 8.20 a.m. the accused came riding on his motor cycle bearing Reg. No. KL-8-P-1563 in a rash and negligent manner endangering human life along the Koratty-Kadukutty public road from east to west. When the motor bike driven by the accused reached in front of the house of Kudiyirippu Devassy at Kadukutty, it dashed against another motor cycle bearing Reg. No. KL-8-R-7769 driven by P.W.1 Francis along the same road and coming from the opposite direction causing fracture of his nasal bone and other injuries on different parts of his body. The accused has thereby committed the aforementioned offences.

3. On the side of the prosecution, six witnesses were examined as P.Ws 1 to 6 and 5 documents were got marked as Exts.P1 to P5. After the close of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his

innocence. He did not adduce any defence evidence when called upon to do so.

4. The learned Magistrate, after trial , as per judgment dated 21-08-2004 found the revision petitioner guilty of the offences and sentenced him to simple imprisonment for three months each under Secs. 279 and 338 I.P.C. On appeal preferred by the revision petitioner as Crl.Appeal No. 530 of 2004 before the Sessions court, Thrissur, the Addl. Sessions Judge (Adhoc), Fast Track court No. I, Thrissur as per judgment dated 29-10-2007 confirmed the conviction entered and the sentence passed against the revision petitioner. Hence, this Revision.

5. Eventhough the learned counsel for the revision petitioner assailed on various grounds the conviction recorded against the petitioner, since the conviction has been entered by the courts below after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loathe to interfere with the said conviction. The facts of the case show that the accused who was riding his motorcycle along the highway from east to west dashed against the motor cycle driven by P.W.1 at a point 50 cms. to the south of the norther tarred edge of the road. It shows that the revision petitioner was on the extreme wrong side of the road. His contention that the occurrence was an unforeseen one as a result of his swerving the two wheeler to avoid a pit on the road was rightly not accepted by the courts below. The conviction entered against the revision petitioner is accordingly confirmed.

6. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. The facts and circumstances of the case show that there

were pits on the road necessitating negotiation of the same by the motorist. Hence, there is some force in the contention of the revision petitioner that the accident took place while negotiating a pit. But, had he been driving the two wheeler at a reasonable speed the mishap could have been averted. On the facts and circumstances of the case, I do not, however, think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that an appropriate sentence to undergo imprisonment till the rising of the court and an appropriate compensation to the injured shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay fine of Rs. 1,000/- (Rupees one thousand only) and on default to pay the fine to undergo simple imprisonment for 15 days. For his conviction under Section 338 I.P.C. the revision petitioner is sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs. 10,000/- to P.W.1. The compensation shall be deposited before the trial court within 45 days from today failing which the revision petitioner shall suffer simple imprisonment for one month by way of default sentence.

This revision is disposed of confirming the conviction entered but modifying the sentence as above.

V. RAMKUMAR,

(JUDGE)

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